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14 MARKET INC., VALLEJO MINI-MARKET & GAS STATION INC., and MARTIN  
VALLEJO

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF ORANGE**

17  
18 RICARDO NOVELLA, an individual, and on  
behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 RJM VALLEJO MINI MARKET, INC., a  
22 California corporation; MJM VALLEJO  
MINI-MARKET INC., a California  
23 corporation; VALLEJO MINI-MARKET &  
GAS STATION INC., a California  
24 corporation; and MARTIN VALLEJO, an  
individual; and DOES 1 through 100,  
25 inclusive

26 Defendants.  
27  
28

CASE NO.: 30-2023-01312351-CU-OE-CXC

[Assigned for all purposes to the Hon. Melissa  
R. McCormick in Dept. CX105]

**FIRST AMENDED CLASS AND PAGA  
SETTLEMENT AGREEMENT**

Action Filed: June 27, 2023

Trial Date: None Set

1 Subject to final approval by the Court, it is stipulated by and between Plaintiff Ricardo  
2 Novella (“Plaintiff”), on behalf of himself, other similarly situated putative class members and  
3 other aggrieved employees, on the one hand, and Defendants MJM Vallejo Mini-Market, Inc.,  
4 RJM Vallejo Mini-Market, Inc., and Martin Vallejo (collectively, “Defendants”), on the other  
5 hand, that the Action as defined herein is hereby compromised and settled pursuant to the terms  
6 and conditions set forth herein (“Settlement,” “Agreement” or “Settlement Agreement”). The  
7 Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

8 **1. DEFINITIONS**

9 1.1. “Action” herein includes: (1) the Class Action lawsuit filed by Plaintiff on March 14,  
10 2023, entitled *Ricardo Novella v. RJM Vallejo Mini Market, Inc., et al.*, currently pending in  
11 Orange County Superior Court, Case No. 30-2023-01312351-CU-OE-CXC (the “Class Action  
12 Complaint”); (2) Plaintiff’s First Amended Complaint filed on June 27, 2023, which includes a  
13 cause of action for Violation of the California Labor Code Private Attorneys General Act  
14 (PAGA) of 2004, and subject to the Court’s November 28, 2023, Order dismissing (without  
15 prejudice) Plaintiff’s Fifth Cause of Action for Waiting Time Penalties, Ninth Cause of Action  
16 for Failure to Pay Interest on Depositions, and Tenth Cause of Action for Violation of Labor  
17 Code § 227.3, and the Court’s December 12, 2023, Order dismissing (without prejudice)  
18 defendant Vallejo Mini-Market & Gas Station Inc (the “FAC”); and (3) the written notice to the  
19 Labor and Workforce Development Agency (“LWDA”) submitted by Plaintiff against  
20 Defendants on March 14, 2023, pursuant to Labor Code section 2699.3 of the specific provisions  
21 of the California Labor Code alleged to have been violated by Defendants, LWDA-CM-941993-  
22 23 (the “PAGA Notice”).

23 1.2. “Administrator” means ILYM Group, Inc., the neutral entity Plaintiff has agreed to  
24 appoint to administer the Settlement.

25 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid  
26 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance  
27 with the Administrator’s “not to exceed” bid submitted to the Court for approval in connection  
28 with Preliminary Approval of the Settlement.

1 1.4. “Aggrieved Employees” means all persons currently or formerly employed by  
2 Defendants as non-exempt, hourly-paid employees in the State of California during the PAGA  
3 Period.

4 1.5. “Class” or “Settlement Class” means all persons currently or formerly employed by  
5 Defendants, as non-exempt, hourly-paid employees in the State of California during the Class  
6 Period.

7 1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,  
8 P.C.

9 1.7. “Class Counsel Fees Payment” means the amount that the Court awards Class Counsel in  
10 reasonable attorneys’ fees in connection with the Action, not to exceed 30% of the Gross  
11 Settlement Amount. If the Court awards less than the amount requested, any amount not awarded  
12 will become part of the Net Settlement Amount for distribution to Participating Class Members.

13 1.8. “Class Counsel Litigation Expenses Payment” means the amount that the Court awards  
14 Class Counsel in expenses incurred in connection with the Action, not to exceed Thirty Thousand  
15 Dollars and Zero Cents (\$30,000.00). If the Court awards less than the amount requested, any  
16 amount not awarded will become part of the Net Settlement Amount for distribution to  
17 Participating Class Members.

18 1.9. “Class Data” means Class Member identifying information in Defendants’ custody,  
19 possession, or control, including the Class Member’s (1) the full name; (2) last known  
20 address(es); (3) last four digits of the last known Social Security Number(s); and (4) the dates of  
21 employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

22 1.10. “Class Member” or “Settlement Class Member” means a member of the Class, as either  
23 a Participating Class Member or Non-Participating Class Member (including a Non- Participating  
24 Class Member who qualifies as an Aggrieved Employee) during the Class Period.

25 1.11. “Class Member Address Search” means the Administrator’s investigation and search for  
26 current Class Member mailing addresses using all reasonably available sources, methods and  
27 means including, but not limited to, the National Change of Address database, skip traces, and  
28 direct contact by the Administrator with Class Members.

1 1.12. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION  
2 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to  
3 Class Members in English and Spanish in the form, without material variation, attached as Exhibit  
4 A and incorporated by reference into this Agreement.

5 1.13. “Class Period” means the period from March 14, 2019, through November 22, 2024.

6 1.14. “Class Representative” means the named Plaintiff in the Operative Complaint in the  
7 Action seeking Court approval to serve as a Class Representative – Ricardo Novella.

8 1.15. “Class Representative Enhancement Payment” means the amount that the Court awards  
9 as payment to the Class Representative for initiating the Action and providing services in support  
10 of the Action, not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00).  
11 If the Court awards less than the amount requested, any amount not awarded will become part of  
12 the Net Settlement Amount for distribution to Participating Class Members.

13 1.16. “Court” means the Superior Court of California, County of Orange.

14 1.17. “Defendants” means, collectively, named Defendants MJM Vallejo Mini-Market, Inc.,  
15 RJM Vallejo Mini-Market, Inc. and Martin Vallejo.

16 1.18. “Defense Counsel” means Christine D. Baran and Joshua Klein of Fisher & Phillips LLP.

17 1.19. “Effective Date” means the date when all of the following events have occurred: (1) the  
18 Settlement Agreement has been executed by all Parties, Class Counsel, and Defense Counsel; (2)  
19 the Court has given preliminary approval to the Settlement; (3) the Class Notice has been mailed  
20 to the Class Members, providing them with an opportunity to object to the terms of the Class  
21 Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval Hearing  
22 and entered a Final Approval Order and Judgment; (5) sixty-five (65) calendar days have passed  
23 since the Court entered a Final Approval Order and Judgment; and (6) in the event there are  
24 written objections to the Class Settlement filed prior to the Final Approval Hearing which are not  
25 later withdrawn or denied, the later of the following events: (a) five (5) business days after the  
26 period for filing any appeal, writ, or other appellate proceeding opposing the Court’s Final  
27 Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding  
28 having been filed; or (b) if any appeal, writ, or other appellate proceeding opposing the Court’s

1 Final Approval Order and Judgment has been filed, five (5) business days after any appeal, writ,  
2 or other appellate proceedings opposing the Court’s Final Approval Order and Judgment has  
3 finally and conclusively been dismissed with no right to pursue further remedies or relief.

4 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement.

5 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval  
6 of the Settlement.

7 1.22. “Final Judgment” means the Judgment entered by the Court based upon the Final  
8 Approval.

9 1.23. “Gross Settlement Amount” means the non-reversionary maximum amount of Six  
10 Hundred Fifty Thousand Dollars and Zero Cents (\$650,000.00), to be paid by Defendants,  
11 exclusive of Defendants’ share of any employer payroll taxes due in connection with the Wage  
12 Portion of each Participating Class Member’s Individual Class Payment. This is the gross  
13 amount Defendants shall be required to pay under this Settlement, which includes, without  
14 limitation (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Class  
15 Counsel Fees Payment, (3) Class Counsel Litigation Expenses Payment, (4) Class Representative  
16 Enhancement Payment, (5) Administration Expenses Payment; and (6) PAGA penalties to be  
17 paid to the LWDA and to PAGA Employees, as approved by the Court.

18 1.24. “Individual Class Payment” means the Participating Class Member’s pro rata share of the  
19 Net Settlement Amount calculated according to the number of Workweeks worked during the  
20 Class Period.

21 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of  
22 the PAGA Penalties calculated according to the number of pay periods worked during the PAGA  
23 Period.

24 1.26. “Judgment” means the final judgment entered by the Court based upon Final Approval  
25 following the exhaustion of any appeal rights.

26 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency  
27 entitled, under Labor Code section 2699, subd. (i).

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1 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA  
2 under Labor Code section 2699, subd. (i).

3 1.29. “Net Settlement Amount” means the Gross Settlement Amount distributable to the  
4 Participating Settlement Class Members after the deduction of the amounts approved by the  
5 Court for PAGA Penalties, Class Representative Enhancement Payment, Class Counsel Fees  
6 Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment.  
7 The remainder is to be paid to Participating Class Members as Individual Class Payments.

8 1.30. “Non-Participating Class Member” means any Class Member who opts out of the  
9 Settlement by sending the Administrator a valid and timely Request for Exclusion.

10 1.31. “Operative Complaint” means the Second Amended Complaint to be filed in the Action  
11 to reinstate the Fifth, Ninth and Tenth Causes of Action and any other release claims.

12 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee was  
13 employed by Defendants for at least one day during the PAGA Period, based on hire dates, re-  
14 hire dates (as applicable), and termination dates (as applicable).

15 1.33. “PAGA Period” means the period from January 8, 2022 through the end of the Class  
16 Period.

17 1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

18 1.35. “PAGA Notice” means Plaintiff’s March 14, 2023, letter to Defendants and the LWDA,  
19 providing notice pursuant to Labor Code section 2699.3 subd. (a), LWDA-CM-941993-23.

20 1.36. “PAGA Penalties” consists of Twenty Thousand Dollars (\$20,000.00) of the Gross  
21 Settlement Amount allocated for the settlement and release of claims for civil penalties under the  
22 PAGA. Twenty-five percent (25%) of the PAGA Penalties shall be allocated to the Aggrieved  
23 Employees (\$5,000.00) and seventy-five percent (75%) of the PAGA Penalties shall be allocated  
24 to the LWDA (\$15,000.00).

25 1.37. “Participating Class Member” means a Class Member who does not submit a valid and  
26 timely Request for Exclusion from the Settlement. Participating Class Members will release the  
27 Released Parties from Released Class Claims and Released PAGA Claims, as applicable, and  
28 will be bound by all terms of this Settlement and any final judgment entered in the Action.

1 1.38. “Plaintiff,” “Named Plaintiff,” or “Class Representative” means RICARDO NOVELLA,  
2 the named Plaintiff in the Action.

3 1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the  
4 Settlement.

5 1.40. “Preliminary Approval Order” means the Court’s order preliminarily approving the  
6 proposed Settlement following the Preliminary Approval Hearing.

7 1.41. “Qualified Settlement Account,” “QSA,” “Qualified Settlement Fund,” or “QSF” means  
8 a fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that  
9 is established by the Administrator for the benefit of Participating Class Members.

10 1.42. “Released Class Claims” means the claims being released as described in Paragraph 5.2  
11 below.

12 1.43. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4  
13 below.

14 1.44. “Released Parties” means: Defendants, and their past, present, and future predecessors,  
15 successors, officers, directors, employees and agents.

16 1.45. “Request for Exclusion” means a Class Member’s submission of a written request to be  
17 excluded from the Class Settlement signed by the Class Member.

18 1.46. “Response Deadline” means sixty (60) days after the Administrator mails Notice to Class  
19 Members and Aggrieved Employees and shall be the last date on which Class Members may: (a)  
20 mail Requests for Exclusion from the Settlement, (b) mail his or her Objection to the Settlement,  
21 or (c) mail his or her Workweek and/or Pay Period Challenge. Class Members to whom Notice  
22 Packets are resent after having been returned undeliverable to the Administrator shall have an  
23 additional 15 days beyond the Response Deadline has expired.

24 1.47. “Settlement” or “Agreement” means this Class Action and PAGA Settlement Agreement.

25 1.48. “Workweek” means any week during which a Class Member was employed by  
26 Defendants for at least one day in a non-exempt, hourly-paid position during the Class Period in  
27 California, based on hire dates, re-hire dates (as applicable), and termination dates (as  
28 applicable).

1           **2.       RECITALS**

2   2.1.    On March 14, 2023, Mr. Novella filed a letter (“PAGA Notice”) with the Labor and  
3   Workforce Development Agency (“LDWA”), notifying the LDWA and Defendants of his  
4   intention to file a complaint pursuant to the Private Attorneys’ General Act of 2004 (“PAGA”)  
5   on behalf of himself and all others aggrieved.

6   2.2.    On that same day, Mr. Novella filed his wage and hour class action against Defendants  
7   on behalf of himself and those similarly situated in the Orange County Superior Court, Case No.  
8   30-2023-01312351-CU-OE-CXC, alleging: failure to pay overtime and minimum wages; failure  
9   to provide meal breaks, rest breaks, or compensation in lieu thereof; waiting time penalties; wage  
10   statement violations; failure to timely pay wages; failure to pay interest on deposits; violation  
11   of Labor Code Section 227.3, and unfair competition.

12   2.3.    On June 27, 2023, Plaintiff amended the Action adding causes of action pursuant to  
13   PAGA. After initial meet and confer efforts with Defendant Vallejo Mini-Market & Gas Station,  
14   their owners provided declarations representing that they did not hire Plaintiff or any of the  
15   putative class and did not control the wages or working conditions of the putative class.  
16   Accordingly, the parties entered into a stipulation on December 12, 2023, to dismiss Defendant  
17   Vallejo Mini-Market & Gas Station.

18   2.4.    On November 28, 2023, the Court sustained Defendants demurrer and entered an Order  
19   dismissing, without prejudice, Plaintiff’s Fifth Cause of Action for Waiting Time Penalties, Ninth  
20   Cause of Action for Failure to Pay Interest on Deposits, and Tenth Cause of Action for  
21   Violation of Labor Code § 227.3.

22   2.5.    Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

23   2.6.    Prior to mediation Plaintiff obtained, through informal discovery: (a) all electronic time  
24   and pay data for the period from 2022 up to 2024; and (b) a sampling of data for the remaining  
25   pay quarters.

26   2.7.    Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in  
27   *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*  
28   *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

1 2.8. On August 22, 2024, the Parties participated in an all-day mediation presided over by  
2 Marc Feder, Esquire, which led to the Parties reaching an agreement to settle the Action.

3 2.9. Defendants have concluded that it is desirable that the Action be settled in a manner and  
4 upon such terms and conditions set forth herein in order to avoid further risk and expense of  
5 litigation and the inconvenience and distraction of further legal proceedings. Defendants deny  
6 each of the allegations and claims asserted against it in the Action which includes the PAGA  
7 Notice. However, Defendants nevertheless desires to settle the Action for the purpose of avoiding  
8 the burden, expense and uncertainty of continuing litigation, and for the purpose of putting to  
9 rest the controversies engendered by the Action.

10 2.10. Class Counsel have conducted significant investigation of the law and facts relating to  
11 the claims asserted in the Action and the PAGA Notice, and have concluded that the Settlement  
12 set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class,  
13 taking into account the sharply contested issues involved, the expense and time necessary to  
14 litigate the Action through trial and any appeals, the risks and costs of further litigation of the  
15 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information  
16 learned through discovery regarding Plaintiff's allegations, and the substantial benefits to be  
17 received by Settlement Class Members.

18 2.11. The Court has not granted class certification.

19 2.12. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any  
20 other pending matter or action asserting claims that will be extinguished or affected by the  
21 Settlement.

22 2.13. As part of this Agreement, the Parties agree to stipulate to Plaintiff filing a Second  
23 Amended Complaint to reinstate his causes of action for: (1) Waiting Time Penalties; (2) Failure  
24 to Pay Interest on Deposits; and (3) Violation of Labor Code § 227.3 previously dismissed  
25 without prejudice on November 28, 2023 and any other claims released by this Settlement.

### 26 **3. MONETARY TERMS**

27 3.1. Gross Settlement Amount. Defendants promise to pay \$650,000.00 as the Gross  
28 Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement at Defendants'

1 sole option, and to separately pay any and all employer payroll taxes owed on the Wage Portions  
2 of the Individual Class Payments. Defendants' obligation to pay the Gross Settlement Amount  
3 (or any payroll taxes) shall be no later than seven (7) days after the Effective Date. The  
4 Administrator will disburse the entire Gross Settlement Amount without asking or requiring  
5 Participating Class Members or Aggrieved Employees to submit any claim as a condition of  
6 payment. None of the Gross Settlement Amount will revert to Defendants.

7 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct  
8 the following payments from the Gross Settlement Amount, in the amounts specified by the Court  
9 in the Final Approval:

10 3.2.1. To Plaintiff: Class Representative Enhancement Payment to Plaintiff in the  
11 amount of \$7,500.00, in addition to any Individual Class Payment and any Individual  
12 PAGA Payment Plaintiff is entitled to receive as a Participating Class Member.  
13 Defendants will not oppose Plaintiff's request for a Class Representative Enhancement  
14 Payment that does not exceed this amount. As part of the motion for Class Counsel  
15 Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court  
16 approval for any Class Representative Enhancement Payment prior to the Final  
17 Approval Hearing. If the Court approves a Class Representative Enhancement  
18 Payment less than the amount requested, the Administrator will retain the remainder in  
19 the Net Settlement Amount and shall be distributed to Participating Class Members as  
20 part of their Individual Settlement Payment. The Administrator will pay the Class  
21 Representative Enhancement Payment using IRS Form 1099. Plaintiff assumes full  
22 responsibility and liability for any applicable employee taxes owed on the Class  
23 Representative Enhancement Payment.

24 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty percent  
25 (30%) of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph  
26 8.1 of this Agreement, is currently estimated to be \$195,000.00 and a Class Counsel  
27 Litigation Expenses Payment of not more than \$30,000.00. Defendants will not oppose  
28 requests for these payments provided that they do not exceed these amounts. Plaintiff

1 and/or Class Counsel will endeavor to file a motion for Class Counsel Fees Payment  
2 and Class Litigation Expenses Payment prior to the Final Approval Hearing. If the  
3 Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation  
4 Expenses Payment less than the amounts requested, the Administrator will allocate the  
5 remainder to the Net Settlement Amount. Released Parties shall have no liability to  
6 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion  
7 any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.  
8 The Administrator will pay the Class Counsel Fees Payment and Class Counsel  
9 Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full  
10 responsibility and liability for taxes owed on the Class Counsel Fees Payment and the  
11 Class Counsel Litigation Expenses Payment and holds Defendants harmless, and  
12 indemnifies Defendants, from any dispute or controversy regarding any division or  
13 sharing of any of these Payments. There will be no additional charge of any kind to  
14 either the Settlement Class Members or request for additional consideration from  
15 Defendants for such work unless Defendants materially breach this agreement by  
16 failing to fund the Settlement pursuant to the terms herein and further efforts are  
17 necessary from Class Counsel to remedy said breach, including, without limitation,  
18 moving the Court to enforce the Agreement. In the event Defendants fail to breach this  
19 agreement by failing to timely fund the Settlement as set forth in this Agreement,  
20 Defendants shall be entitled to cure that breach by submitting such funding to the  
21 Administrator within 10 days of receipt of written notice by Class Counsel to Defense  
22 Counsel in electronic form. Should Defendants cure the funding breach within the 10-  
23 day cure period of receipt of written notice, no additional consideration shall be due by  
24 Defendants under the terms of this Agreement. Should the Court approve attorneys'  
25 fees and/or litigation costs and expenses in amounts that are less than the amounts  
26 provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement  
27 Amount.

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1 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed  
2 \$6,950.00 except for a showing of good cause and as approved by the Court. To the  
3 extent the Administration Expenses are less or the Court approves payment less than  
4 \$6,950.00, the Administrator will retain the remainder in the Net Settlement Amount.

5 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated  
6 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked  
7 by all Participating Class Members during the Class Period and (b) multiplying the  
8 result by each Participating Class Member's Workweeks.

9 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating  
10 Class Member's Individual Class Payment will be allocated to settlement of  
11 wage claims (the "Wage Portion"). The Wage Portions are subject to tax  
12 withholding and will be reported on an IRS W-2 Form. The 80% of each  
13 Participating Class Member's Individual Class Payment will be allocated to  
14 settlement of claims for interest and penalties (the "Non-Wage Portion"). The  
15 Non-Wage Portions are not subject to wage withholdings and will be reported  
16 on IRS 1099 Forms. Participating Class Members assume full responsibility and  
17 liability for any employee taxes owed on their Individual Class Payment.

18 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual  
19 Class Payments. Non-Participating Class Members will not receive any  
20 Individual Class Payments. The Administrator will retain amounts equal to their  
21 Individual Class Payments in the Net Settlement Amount for distribution to  
22 Participating Class Members on a pro rata basis.

23 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of  
24 \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00)  
25 allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual  
26 PAGA Payments.

27 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a)  
28 dividing the amount of the Aggrieved Employees' 25% share of PAGA

1 Penalties \$5,000.00 by the total number of PAGA Period Pay Periods worked  
2 by all Aggrieved Employees during the PAGA Period and (b) multiplying the  
3 result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved  
4 Employees assume full responsibility and liability for any taxes owed on their  
5 Individual PAGA Payment. The Administrator will report the Individual PAGA  
6 Payments on IRS 1099 Forms. PAGA Employees have no statutory or other  
7 right to opt out or otherwise exclude himself or herself from the PAGA portion  
8 of the Settlement, which releases the PAGA claims. In addition, a PAGA  
9 Employee who submits a valid and timely request for exclusion as a Class  
10 Member shall still receive his or her Individual PAGA Payment and shall  
11 release the PAGA claims.

12 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested,  
13 the Administrator will allocate the remainder to the Net Settlement Amount.

#### 14 **4. SETTLEMENT FUNDING AND PAYMENTS**

15 4.1. Class Workweeks and PAGA Pay Periods. Based on a review of Defendants' records at  
16 the time of mediation, Defendants estimated that the number of Class Members and Workweeks  
17 through the date of mediation was approximately 319 and 22,469, respectively, and that the  
18 number of Aggrieved Employees and PAGA Pay Periods through the date of mediation was  
19 approximately 188 and 10,249, respectively. Based on a current review of Defendants' records  
20 the number of Class Members and Workweeks through the Class Period is approximately 332  
21 and 23,174, respectively, and the number of Aggrieved Employees and PAGA Pay Periods  
22 through the Class Period is approximately 203 and 11,146, respectively.

23 4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of the  
24 Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a  
25 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must  
26 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement  
27 and for no other purpose, and restrict access to the Class Data to Administrator employees who  
28 need access to the Class Data to effect and perform under this Agreement. Defendants have a

1 continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted  
2 class member identifying information and to provide corrected or updated Class Data as soon as  
3 reasonably feasible. The Parties and their counsel will expeditiously use best efforts, in good  
4 faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

5 4.3. Funding of Gross Settlement Amount. Defendants shall make payment of the Gross  
6 Settlement Amount (as the same may be increased pursuant to Paragraph 8.1 of this Agreement  
7 at Defendants' sole discretion) and Employer Taxes to the Settlement Administrator pursuant to  
8 Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement  
9 account ("QSA") with an FDIC insured banking institution, for distribution in accordance with  
10 this Agreement and the Court's Orders, and subject to the conditions described herein.  
11 Defendants shall fully fund the Gross Settlement Amount and also fund the amounts necessary  
12 to fully pay Defendants' share of payroll taxes as calculated by the Administrator by transmitting  
13 the funds to the Administrator no later than seven (7) days after the Effective Date.

14 4.4. Payments from the Gross Settlement Amount. Within 7 days after Defendants fund the  
15 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,  
16 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses  
17 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and  
18 the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment,  
19 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment  
20 shall not precede disbursement of Individual Class Payments, and the Individual PAGA  
21 Payments.

22 4.4.1. Administrator will issue checks for the Individual Class Payments and/or  
23 Individual PAGA Payments and send them to the Class Members via First Class U.S.  
24 Mail, postage prepaid. The face of each check shall prominently state the date (not less  
25 than 180 days after the date of mailing) when the check will be voided. The  
26 Administrator will cancel all checks not cashed by the void date. The Administrator  
27 will send checks for Individual Settlement Payments to all Participating Class Members  
28 (including those for whom Class Notice was returned undelivered). The Administrator

1 will send checks for Individual PAGA Payments to all Aggrieved Employees including  
2 Non-Participating Class Members who qualify as Aggrieved Employees (including  
3 those for whom Class Notice was returned undelivered). The Administrator may send  
4 Participating Class Members a single check combining the Individual Class Payment  
5 and the Individual PAGA Payment. Before mailing any checks, the Settlement  
6 Administrator must update the recipients' mailing addresses using the National Change  
7 of Address Database.

8 4.4.2. The Administrator must conduct a Class Member Address Search for all other  
9 Class Members whose checks are returned undelivered without USPS forwarding  
10 address. Within 7 days of receiving a returned check the Administrator must re-mail  
11 checks to the USPS forwarding address provided or to an address ascertained through  
12 the Class Member Address Search. The Administrator need not take further steps to  
13 deliver checks to Class Members whose re-mailed checks are returned as undelivered.  
14 The Administrator shall promptly send a replacement check to any Class Member whose  
15 original check was lost or misplaced, requested by the Class Member prior to the void  
16 date.

17 4.4.3. For any Class Member whose Individual Class Payment check or Individual  
18 PAGA Payment check is uncashed and cancelled after the void date, the Administrator  
19 shall transmit the funds represented by such checks to the California Controller's  
20 Unclaimed Property Fund, in the name of the Class Member, thereby leaving no "unpaid  
21 residue" subject to the requirements of California Code of Civil Procedure section 384,  
22 subd. (b).

23 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall  
24 not obligate Defendants to confer any additional benefits or make any additional  
25 payments to Class Members (such as 401(k) contributions or bonuses) beyond those  
26 specified in this Agreement.

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1           **5.       RELEASE OF CLAIMS**

2   5.1.   Plaintiff's Comprehensive Release of Claims. Upon the Effective Date of the Settlement  
3 and Defendants' fulfillment of its payment obligations set forth herein, Plaintiff and his former  
4 and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and  
5 assigns generally release and discharge the Released Parties from any and all charges,  
6 complaints, claims, debts, liabilities, promises, agreements, controversies, actions, suits, rights,  
7 demands, obligations, guarantees, costs, losses, penalties, expenses, attorneys' fees, damages, or  
8 causes of action of any kind or nature whatsoever, known or unknown, suspected or unsuspected,  
9 asserted or unasserted, or that might have been asserted, whether in tort, contract, equity, or  
10 otherwise which Plaintiff, at any time prior to the execution of this Settlement Agreement, had  
11 or claimed to have or may have, including but not limited to any and all claims arising out of,  
12 relating to, or resulting from her employment, payment of wages during that employment and/or  
13 separation of employment with the Released Parties, including any claims arising under any  
14 federal, state, or local law, statute, ordinance, rule, or regulation or Executive Order relating to  
15 employment, including, but in no way limited to, any claim under Title VII of the Civil Rights  
16 Act of 1964, as amended ("Title VII"), 42 U.S.C. § 1981; the Americans with Disabilities Act  
17 ("ADA"); the Family and Medical Leave Act ("FMLA"); the Age Discrimination in Employment  
18 Act (ADEA), the Employee Retirement Income Security Act ("ERISA"); the California Family  
19 Rights Act ("CFRA"); the California Fair Employment and Housing Act ("FEHA"); all claims  
20 for wages or penalties under the Fair Labor Standards Act ("FLSA"); all claims for wages or  
21 penalties under the California Labor Code; Business and Professions Code sections 17200 *et*  
22 *seq.*; all laws relating to violation of public policy, retaliation, or interference with legal rights;  
23 any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or  
24 constitutional claims; and any breach of contract claims or claims of promissory estoppel. It is  
25 agreed that this is a general release and is to be broadly construed as a release of all claims,  
26 provided that, notwithstanding the foregoing, this Paragraph expressly does not include a release  
27 of any claims that cannot be released hereunder by law. Plaintiff understands and expressly  
28 agrees that this Settlement Agreement extends to claims that he has against Defendant, of

1 whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent,  
2 past, present, or future, arising from or attributable to an incident or event, occurring in whole or  
3 in part, on or before the execution of this Settlement Agreement. Any and all rights granted  
4 under any state or federal law or regulation limiting the effect of this Settlement Agreement,  
5 including the provisions of Section 1542 of the California Civil Code, ARE HEREBY  
6 EXPRESSLY WAIVED.

7 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For  
8 purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquishes the  
9 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,  
10 which reads:

11 A general release does not extend to claims that the creditor or releasing party does not  
12 know or suspect to exist in his or her favor at the time of executing the release, and that  
13 if known by him or her would have materially affected his or her settlement with the  
14 debtor or Released Party.

15 5.2. Released Class Claims by Participating Class Members: Upon the Effective Date and  
16 Defendants' fulfillment of its payment obligations set forth herein, Plaintiff and Participating  
17 Class Members release and forever discharge the Released Parties, for the duration of the Class  
18 Period, from all claims based on the factual allegations and statutes asserted or that reasonably  
19 could have been asserted in the Action based on the facts alleged in the Operative Complaint.  
20 This includes claims for: (1) failure to pay overtime wages; (2) failure to pay minimum wages;  
21 (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties;  
22 (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure  
23 to pay interest on deposits; (10) violation of labor code § 227.3; (11) unfair competition; and (12)  
24 all claims asserted through California Business & Professions Code section 17200, *et seq.* arising  
25 out of the Labor Code violations referenced in the Operative Complaint.

26 5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not  
27 release any other claims, including claims for vested benefits, wrongful termination, violation of  
28

1 the Fair Employment and Housing Act, unemployment insurance, disability, social security,  
2 workers' compensation, or claims based on facts occurring outside the Class Period.

3 5.4. Released PAGA Claims: Upon the Effective Date and Defendants' fulfillment of its  
4 payment obligations as set forth herein, to the extent permitted by law, the Aggrieved Employees  
5 release and forever discharge Released Parties, for the duration of the PAGA Period, from all  
6 claims for civil penalties under PAGA based on the factual allegations and statutes asserted or  
7 that could reasonably have been asserted in Plaintiff's PAGA Notice and in the Operative  
8 Complaint in the Action. These are all claims for civil penalties based upon or arising out of  
9 Defendant's alleged violation of Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204,  
10 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 246 *et seq.*, 404, 432, 432.3, 432.5,  
11 432.6, 432.7, 432.8, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,  
12 1197.1, 1197.5, 1198.5, 1527, 2699, 2699.3, 2802, 2810.5, 3366, 3457, 6401, 6402, 6403,  
13 6409.6, 6432, and 8397.4, Cal. Code Regs., title 8, section 110404(5)(A), and applicable Wage  
14 Orders. The Released PAGA Claims include a release from the State of California (to the extent  
15 Plaintiff is permitted to provide such a release for the State of California for the PAGA Period).

## 16 **6. MOTION FOR PRELIMINARY APPROVAL**

17 The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion  
18 for Preliminary Approval") that complies with the Court's current checklist for Preliminary  
19 Approvals.

20 6.1. Plaintiff's Responsibilities. Plaintiff will prepare and endeavor to deliver to Defense  
21 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the  
22 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an  
23 analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement  
24 under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary  
25 Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed  
26 declaration from the Administrator attaching its "not to exceed" bid for administering the  
27 Settlement and attesting to its willingness to serve; competency; operative procedures for  
28 protecting the security of Class Data; amounts of insurance coverage for any data breach,

1 defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of  
2 interest with Class Members; and the nature and extent of any financial relationship with  
3 Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming  
4 willingness and competency to serve and disclosing all facts relevant to any actual or potential  
5 conflicts of interest with Class Members; (v) a signed declaration from each Class Counsel firm  
6 attesting to its competency to represent the Class Members; its timely transmission to the LWDA  
7 of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd.  
8 (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code  
9 section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest  
10 with Class Members and the Administrator.

11 6.2. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and  
12 filing the Motion for Preliminary Approval after the full execution of this Agreement; obtaining  
13 a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to  
14 advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for  
15 delivering the Court's Preliminary Approval to the Administrator.

16 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for  
17 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and  
18 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and  
19 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary  
20 Approval or conditions Preliminary Approval on any material change to this Agreement, Class  
21 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by  
22 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the  
23 Court's concerns, if possible. The Parties retain the right, in the exercise of their sole respective  
24 discretion, to unilaterally withdraw from and terminate the Settlement if the Court makes or  
25 orders material changes to the Basic Settlement Terms. Basic Settlement Terms include: (a) the  
26 amount of the Gross Settlement Amount; (b) the time period of the Released Class Claims; (c)  
27 the covered Class or PAGA Period; (d) the Escalator Clause; and/or (e) the Parties respective  
28 Option to Revoke Settlement as set forth herein.

1           **7. SETTLEMENT ADMINISTRATION**

2 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.  
3 (“ILYM”), to serve as the Administrator and verified that, as a condition of appointment, ILYM  
4 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this  
5 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel  
6 represent that they have no interest or relationship, financial or otherwise, with the Administrator  
7 other than a professional relationship arising out of prior experiences administering settlements.

8 7.2. Employer Identification Number. The Administrator shall have and use its own Employer  
9 Identification Number for purposes of calculating payroll tax withholdings and providing reports  
10 state and federal tax authorities.

11 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets  
12 the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury Regulation section  
13 468B-1.

14 7.4. Notice to Class Members

15       7.4.1. No later than three (3) business days after receipt of the Class Data, the  
16 Administrator shall notify Class Counsel that the list has been received and state the  
17 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the  
18 Class Data.

19       7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14  
20 days after receiving the Class Data, the Administrator will send to all Class Members  
21 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,  
22 the Class Notice with Spanish translation, substantially in the form attached to this  
23 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the  
24 dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable  
25 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable)  
26 used to calculate these amounts. Before mailing Class Notices, the Administrator shall  
27 update Class Member addresses using the National Change of Address database.

28 ///

1 7.4.3. Not later than 3 business days after the Administrator's receipt of any Class Notice  
2 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice  
3 using any forwarding address provided by the USPS. If the USPS does not provide a  
4 forwarding address, the Administrator shall conduct a Class Member Address Search,  
5 and re-mail the Class Notice to the most current address obtained. The Administrator  
6 has no obligation to make further attempts to locate or send Class Notice to Class  
7 Members whose Class Notice is returned by the USPS a second time.

8 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks  
9 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days  
10 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose  
11 notice is re-mailed. The Administrator will inform the Class Member of the extended  
12 deadline with the re-mailed Class Notice.

13 7.4.5. If the Administrator, Defendants or Class Counsel is contacted by or otherwise  
14 discovers any persons who believe they should have been included in the Class Data  
15 and should have received Class Notice, the Parties will expeditiously meet and confer,  
16 in good faith, in an effort to agree on whether to include them as Class Members. If the  
17 Parties agree, such persons will be Class Members entitled to the same rights as other  
18 Class Members, and the Administrator will send, via email or overnight delivery, a Class  
19 Notice requiring them to exercise options under this Agreement not later than 15 days  
20 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are  
21 later.

22 7.5. Requests for Exclusion (Opt-Outs).

23 7.5.1. Class Members who wish to exclude themselves from (opt-out of) the Class  
24 Settlement must send the Administrator, by mail, a signed written Request for Exclusion  
25 not later than 60 days after the Administrator mails the Class Notice (plus an additional  
26 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion  
27 is a letter from a Class Member or his/her representative, signed by the Class Member,  
28 that reasonably communicates the Class Member's election to be excluded from the

1 Settlement and includes the Class Member's name, signature, the last four digits of their  
2 Social Security Number, address, and email address or telephone number. Class  
3 Members may fill out and mail the "Request for Exclusion" form attached hereto as  
4 Exhibit "B" to the Administrator. To be valid, a Request for Exclusion must be timely  
5 postmarked by the Response Deadline. PAGA Employees have no statutory or other  
6 right to opt out or otherwise exclude himself or herself from the PAGA portion of the  
7 Settlement, which releases the PAGA claims. In addition, a PAGA Employee who  
8 submits a valid and timely request for exclusion as a Class Member shall still receive  
9 his or her Individual PAGA Payment and shall release the PAGA claims.

10 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it  
11 fails to contain all the information specified in the Class Notice. The Administrator  
12 shall accept any Request for Exclusion as valid if the Administrator can reasonably  
13 ascertain the identity of the person as a Class Member and the Class Member's desire  
14 to be excluded. The Administrator's determination shall be final and not appealable or  
15 otherwise susceptible to challenge. If the Administrator has reason to question the  
16 authenticity of a Request for Exclusion, the Administrator may demand additional proof  
17 of the Class Member's identity. The Parties shall file with the Court all disputes  
18 submitted by Class Members, the evidence submitted, and the resolution of the disputes.  
19 Although the Settlement Administrator may make the initial decision regarding claims  
20 disputes, the Court may review any decision made by the Settlement Administrator  
21 regarding a claim dispute.

22 7.5.3. Every Class Member who does not submit a timely and valid Request for  
23 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled  
24 to all benefits and bound by all terms and conditions of the Settlement, including the  
25 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,  
26 regardless of whether the Participating Class Member actually receives the Class Notice  
27 or objects to the Settlement.

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1           7.5.4.     Every Class Member who submits a valid and timely Request for Exclusion is a  
2           Non-Participating Class Member and shall not receive an Individual Class Payment or  
3           have the right to object to the class action components of the Settlement. Nothing in this  
4           Settlement will constitute or be construed as a waiver of any defense that Defendant or  
5           the Released Parties have or could assert against anyone who timely submits a Request  
6           for Exclusion, including but not limited to arbitration rights. Because future PAGA  
7           claims are subject to claim preclusion upon entry of the Judgment, Non-Participating  
8           Class Members who are Aggrieved Employees are deemed to release the claims  
9           identified in Paragraph 5.4 of this Agreement and are eligible for an Individual PAGA  
10          Payment.

11        7.6.     Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after  
12        the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose  
13        Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods  
14        (if any) allocated to the Class Member in the Class Notice. Class Members may challenge the  
15        allocation by filling out and mailing the “Workweek Dispute” form attached hereto as Exhibit  
16        “C” to the Administrator via mail by the Response Deadline, explaining the basis for the dispute  
17        and including any supporting documentation showing that the workweeks and/or pay periods  
18        credited to him or her is inaccurate. Defendant’s records will be presumed determinative absent  
19        credible evidence to rebut the accuracy of the workweeks and/or pay periods credited to the Class  
20        Member and PAGA Employee. The Administrator must encourage the challenging Class  
21        Member to submit supporting documentation. The Administrator will evaluate the evidence  
22        submitted by the Class Member or PAGA Employee and make a recommendation to the Parties  
23        as to which figures should be applied. The Parties shall file with the Court all disputes submitted  
24        by Class Members, the evidence submitted, and the resolution of the disputes. Although the  
25        Settlement Administrator may make the initial decision regarding claims disputes, the Court may  
26        review any decision made by the Settlement Administrator regarding a claim dispute.

27        ///  
28        ///  
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1    7.7.   Objections to Settlement

2           7.7.1.    Only Participating Class Members may object to the class action components of  
3           the Settlement and/or this Agreement, including contesting the fairness of the  
4           Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class  
5           Counsel Litigation Expenses Payment and/or Class Representative Enhancement  
6           Payment.

7           7.7.2.    Participating Class Members may send written objections to the Administrator by  
8           filling out and mailing the “Objection to Settlement” form attached hereto as Exhibit  
9           “D” by the Response Deadline. The Participating Class Member’s written objection  
10          should include the objector’s name, the last four digits of their Social Security Number,  
11          address, email address or telephone number, and a statement of whether the objector  
12          plans to appear at the Final Approval Hearing, along with whatever legal authority, if  
13          any, the objector asserts in support of their objections. In the alternative, Participating  
14          Class Members may appear in Court (or hire an attorney to appear in Court) to present  
15          verbal objections at the Final Approval Hearing. A Participating Class Member who  
16          elects to send a written objection to the Administrator must do so not later than 60 days  
17          after the Administrator’s mailing of the Class Notice (plus an additional 15 days for  
18          Class Members whose Class Notice was re-mailed).

19          7.7.3.    If a Class Member objects to the Settlement, the Class Member will remain a  
20          member of the Class. Moreover, if the Court grants final approval of the Settlement,  
21          the Class Member will be bound by the terms of the Settlement and any Final Approval  
22          Order and Final Judgment. Non-Participating Class Members have no right to object to  
23          any of the class action components of the Settlement.

24    7.8.    Administrator Duties. The Administrator has a duty to perform or observe all tasks to be  
25    performed or observed by the Administrator contained in this Agreement or otherwise.

26          7.8.1.    Website, Email Address and Toll-Free Number. The Administrator will maintain  
27          and use an internet website to post information of interest to Class Members including  
28          the date, time and location for the Final Approval Hearing and copies of the Settlement

1 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class  
2 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,  
3 Class Counsel Litigation Expenses Payment and Class Representative Enhancement  
4 Payment, the Final Approval and the Judgment. The Administrator will also maintain  
5 and monitor an email address and a toll-free telephone number to receive Class Member  
6 calls and emails.

7 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will  
8 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.  
9 Not later than 5 days after the expiration of the deadline for submitting Requests for  
10 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel  
11 containing (a) the names and other identifying information of Class Members who have  
12 timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and  
13 other identifying information of Class Members who have submitted invalid Requests  
14 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted  
15 (whether valid or invalid).

16 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written  
17 reports to Class Counsel and Defense Counsel that, among other things, tally the number  
18 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for  
19 Exclusion (whether valid or invalid) received, objections received, challenges to  
20 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for  
21 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The  
22 Weekly Reports must include the Administrator’s assessment of the validity of Requests  
23 for Exclusion and attach copies of all Requests for Exclusion and objections received.

24 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to  
25 address and make final decisions consistent with the terms of this Agreement on all  
26 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The  
27 Parties shall file with the Court all disputes submitted by Class Members, the evidence  
28 submitted, and the resolution of the disputes. Although the Settlement Administrator

1 may make the initial decision regarding claims disputes, the Court may review any  
2 decision made by the Settlement Administrator regarding a claim dispute.

3 7.8.5. Administrator's Declaration. Before the date by which Plaintiff is required to file  
4 the Motion for Final Approval of the Settlement, the Administrator will provide to Class  
5 Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its  
6 due diligence and compliance with all of its obligations under this Agreement, including,  
7 but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered,  
8 the re-mailing of Class Notices, attempts to locate Class Members, the total number of  
9 Requests for Exclusion from Settlement it received (both valid or invalid), the number  
10 of written objections and attach the Exclusion List. The Administrator will supplement  
11 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is  
12 responsible for filing the Administrator's declaration(s) in Court.

13 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator  
14 disburses all funds in the Gross Settlement Amount, the Administrator will provide  
15 Class Counsel and Defense Counsel with a final report detailing its disbursements by  
16 employee identification number only of all payments made under this Agreement. At  
17 least 7 days before any deadline set by the Court, the Administrator will prepare, and  
18 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in  
19 Court attesting to its disbursement of all payments required under this Agreement. Class  
20 Counsel is responsible for filing the Administrator's declaration in Court.

## 21 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

22 8.1 Increase in Workweeks. Defendants' estimate for the number of Workweeks for the  
23 Settlement Class at the time of mediation was approximately 22,469. Based on a current review  
24 of Defendants' records the number of Workweeks through the Class Period is approximately  
25 23,174. In the event the number of Workweeks worked increases by more than 10% through the  
26 Class Period (March 14, 2019 to November 22, 2024) or more than 24,716 total Workweeks  
27 worked, then Defendants shall have the option to either: (a) increase the Gross Settlement  
28 Amount proportionally by the Workweeks worked in excess of 24,716 multiplied by the

1 Workweek Value; or (b) cap the Release Period/Class Period as of the date the number of  
2 Workweeks reaches but does not exceed 10%. The Workweek Value shall be calculated by  
3 dividing the Gross Settlement Amount by 22,469. The Parties agree that the Workweek Value  
4 amounts to \$28.93 per Workweek ( $\$650,000 / 22,469$  Workweeks). Thus, for example, should  
5 Defendants exercise option (a), and should there be 25,000 Workweeks in the Class Period, then  
6 the Gross Settlement Amount would be increased by \$8,273.98 ( $[25,000 \text{ Workweeks} - 24,716$   
7  $\text{Workweeks}] \times \$28.93/\text{Workweek}$ ). Defendant's option (b) above expires upon the Court's entry  
8 of the Preliminary Approval Order.

9 8.2 Nullification: If Settlement Class Members representing more than an aggregate total of  
10 10% of the verified workweeks timely opt out of the class settlement, Defendants shall have the  
11 sole and absolute discretion to rescind/void the Settlement no later than five (5) court days prior  
12 to the date of the Final Approval Hearing. Defendants agree to meet and confer in good faith with  
13 Class Counsel before rescinding or voiding the Settlement. In the event that Defendants elect to  
14 rescind/void the Settlement Agreement, Defendants shall provide written notice of such  
15 rescission to Class Counsel. Such rescission shall have the same effect as a termination of the  
16 Settlement for failure to satisfy a condition of settlement, and the Settlement shall become null  
17 and void and have no further force or effect. In the event that Defendants exercise their option to  
18 revoke the Settlement, Defendants agree to pay the Administration Costs incurred by the  
19 Administrator up to the date of Defendants' notice to revoke. In the event of Defendants'  
20 withdrawal, no party may use the fact that the Parties agreed to the Settlement for any reason.

## 21 **9. MOTION FOR FINAL APPROVAL**

22 Prior to the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for  
23 final approval of the Settlement that includes a request for approval of the PAGA settlement  
24 under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed  
25 Judgment (collectively "Motion for Final Approval"). Plaintiff shall endeavor to provide drafts  
26 of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class  
27 Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve  
28 any disagreements concerning the Motion for Final Approval.

1 9.1. Response to Objections. Each Party retains the right to respond to any objection raised  
2 by a Participating Class Member, including the right to file responsive documents in Court no  
3 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or  
4 accepted by the Court.

5 9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final  
6 Approval on any material change to the Settlement (including, but not limited to, changes to the  
7 Basic Settlement Terms), the Parties will expeditiously work together in good faith to address  
8 the Court's concerns by revising the Agreement as necessary to obtain Final Approval, if  
9 possible. Nothing in this provision waives any party's rights to terminate the settlement as set  
10 forth in section 6.3 or 8.2, above. The Court's decision to award less than the amounts requested  
11 for the Class Representative Enhancement Payment, Class Counsel Fees Payment, Class Counsel  
12 Litigation Expenses Payment, and Administrator Expenses Payment shall not constitute a  
13 material modification to the Agreement within the meaning of this paragraph.

14 9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the  
15 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of  
16 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,  
17 and (iii) addressing such post-Judgment matters as are permitted by law.

18 9.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and  
19 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class  
20 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their  
21 respective counsel, and all Participating Class Members who did not object to the Settlement as  
22 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to  
23 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions  
24 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver  
25 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the  
26 Parties' obligations to perform under this Agreement will be suspended until such time as the  
27 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect  
28 the amount of the Net Settlement Amount.

1 9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the  
2 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material  
3 modification of this Agreement (including the Basic Settlement Terms), this Agreement shall be  
4 null and void. The Parties shall nevertheless expeditiously work together in good faith to address  
5 the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a  
6 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An  
7 appellate decision to vacate, reverse, or modify the Court's award of the Class Representative  
8 Enhancement Payment or any payments to Class Counsel shall not constitute a material  
9 modification of the Judgment within the meaning of this paragraph, as long as the Gross  
10 Settlement Amount remains unchanged.

11 **10. AMENDED JUDGMENT**

12 10.1 If any amended judgment is required under the Code of Civil Procedure section 384, the  
13 Parties will work together in good faith to jointly submit a proposed amended judgment.

14 **11. ADDITIONAL PROVISIONS**

15 11.1. No Admission of Liability, Class Certification or Representative Manageability for Other  
16 Purposes. The Parties enter into this Agreement to resolve the dispute that has arisen between  
17 them and to avoid the burden, expense, and risk of continued litigation. Defendants generally and  
18 specifically deny any and all liability or wrongdoing with any of the claims alleged in the Action  
19 or that it has violated any federal, state, or local law; violated any regulations or guidelines  
20 promulgated pursuant to any statute or any other applicable laws, regulations, or legal  
21 requirements; breached any contract; violated or breached any duty; engaged in any  
22 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its  
23 employees. Defendants further make no concessions or admissions of liability of any sort, makes  
24 no concessions or admissions that any Class Member is or was employed by Defendants, and  
25 contend that for any purpose other than settlement, the Action is not appropriate for class or  
26 representative treatment. Defendants assert several defenses to the claims and have denied any  
27 wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. The  
28 monies being paid as part of the settlement are genuinely disputed, and the Parties agree the

1 provisions of Labor Code section 206.5 are not applicable to this Settlement. Neither this  
2 Agreement, nor any document referred to or contemplated herein, nor any action taken to carry  
3 out this Agreement, is or may be construed as, or may be used as an admission, concession, or  
4 indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or  
5 liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiffs can  
6 serve as adequate Class Representatives. There has been no final determination by any court as  
7 to the merits of the claims asserted or as to whether a class or classes should be certified, other  
8 than for settlement purposes only. Except as necessary in a proceeding to enforce the terms of  
9 this Settlement, this Agreement and its terms and provisions shall not be offered or received as  
10 evidence in any action or proceeding to establish any liability or admission on the part of  
11 Defendants or to establish the existence of any condition constituting a violation of, or a non-  
12 compliance with, federal, state, local or other applicable law. Nor shall anything in this  
13 Agreement be construed or deemed an admission that the Action was properly brought as a class  
14 action pursuant to California Code of Civil Procedure section 382 and under California Business  
15 and Professions Code section 17200 and/or that the Action was properly brought as Private  
16 Attorney General Actions under PAGA. Finally, nothing in this Agreement or in the Preliminary  
17 Approval or Order Granting Final Approval shall be deemed a waiver of Defendants' right to  
18 enforce the arbitration agreements of Class Members or Aggrieved Employees in the future. The  
19 Parties agree that class certification and representative treatment is for purposes of this Settlement  
20 only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter  
21 Judgment, Defendants reserve the right to contest certification of any class for any reasons, and  
22 Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the  
23 right to move for class certification on any grounds available and to contest Defendants' defenses.  
24 The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing  
25 on, and will not be admissible in connection with, any litigation (except for proceedings to  
26 enforce or effectuate the Settlement and this Agreement).

27 11.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and  
28 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement

1 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit  
2 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly  
3 or indirectly, specifically or generally, to any person, corporation, association, government  
4 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom  
5 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the  
6 extent necessary to report income to appropriate taxing authorities; (4) in response to a court  
7 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal  
8 government agency. Each Party agrees to immediately notify each other Party of any judicial or  
9 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,  
10 Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any  
11 conversation or other communication, before the filing of the Motion for Preliminary Approval,  
12 any with third party regarding this Agreement or the matters giving rise to this Agreement except  
13 to respond only that "the matter was resolved," or words to that effect. This paragraph does not  
14 restrict Class Counsel's communications with Class Members in accordance with Class  
15 Counsel's ethical obligations owed to Class Members.

16 11.3. No Solicitation. The Parties separately agree that they and their respective counsel and  
17 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal  
18 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's  
19 ability to communicate with Class Members in accordance with Class Counsel's ethical  
20 obligations owed to Class Members.

21 11.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement  
22 together with its attached exhibits shall constitute the entire agreement between the Parties  
23 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or  
24 inducements made to or by any Party. Nothing in this Agreement or provision or in the  
25 Preliminary Approval or Order Granting Final Approval shall be deemed a waiver of Defendants'  
26 right to enforce the arbitration agreements of Class Members or Aggrieved Employees in the  
27 future.

28 ///

1 11.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
2 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate  
3 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate  
4 its terms, and to execute any other documents reasonably required to effectuate the terms of this  
5 Agreement including any amendments to this Agreement.

6 11.6. Cooperation. The Parties and their counsel will cooperate with each other and use their  
7 best efforts, in good faith, to implement the Settlement by, among other things, modifying the  
8 Settlement Agreement, submitting supplemental evidence and supplementing points and  
9 authorities as requested by the Court. In the event the Parties are unable to agree upon the form  
10 or content of any document necessary to implement the Settlement, or on any modification of the  
11 Agreement that may become necessary to implement the Settlement, the Parties will seek the  
12 assistance of a mediator and/or the Court for resolution.

13 11.7. No Prior Assignments. The Parties separately represent and warrant that they have not  
14 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
15 encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
16 action, or right released and discharged by the Party in this Settlement.

17 11.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are  
18 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied  
19 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR  
20 Part 10, as amended) or otherwise.

21 11.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,  
22 modified, changed, or waived only by an express written instrument signed or agreed to by all  
23 Parties or their representatives and approved by the Court. Plaintiff and Defendants expressly  
24 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any  
25 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any  
26 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on  
27 behalf of the Parties once fully executed.

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1 11.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to  
2 the benefit of, the successors of each of the Parties.

3 11.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be  
4 governed by and interpreted according to the internal laws of the State of California, without  
5 regard to conflict of law principles.

6 11.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of  
7 this Agreement. This Agreement will not be construed against any Party on the basis that the  
8 Party was the drafter or participated in the drafting.

9 11.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered  
10 during Action and in this Agreement relating to the confidentiality of information shall survive  
11 the execution of this Agreement.

12 11.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code  
13 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants  
14 in connection with the mediation, other settlement negotiations, or in connection with the  
15 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not  
16 be used in any way that violates any existing contractual agreement, statute, or rule of court.

17 11.15. Headings. The descriptive heading of any section or paragraph of this Agreement is  
18 inserted for convenience of reference only and does not constitute a part of this Agreement.

19 11.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall  
20 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a  
21 weekend or federal legal holiday, such date or deadline shall be on the first business day  
22 thereafter.

23 11.17. Notice. All notices, demands or other communications between the Parties in connection  
24 with this Agreement will be in writing and deemed to have been duly given as of the third  
25 business day after mailing by United States mail, or the day sent by email or messenger,  
26 addressed as follows:

27 ///

28 ///

1 To Plaintiff: BIBIYAN LAW GROUP, P.C.  
2 David D. Bibiyan  
3 david@tomorrowlaw.com  
4 Vedang J. Patel  
5 vedang@tomorrowlaw.com  
6 Brandon M. Chang  
7 brandon@tomorrowlaw.com  
8 1460 Westwood Boulevard  
9 Los Angeles, CA 90024

7 To Defendants: FISHER & PHILLIPS LLP  
8 Christine D. Baran  
9 cbaran@fisherphillips.com  
10 Joshua D. Klein  
11 jdklein@fisherphillips.com  
12 2050 Main Street, Suite 1000  
13 Irvine, CA 92614  
14 Telephone: (949) 851-2424  
15 Facsimile: (949) 851-0152

13 11.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts  
14 by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes  
15 of this Agreement shall be accepted as an original. All executed counterparts and each of them  
16 will be deemed to be one and the same instrument if counsel for the Parties will exchange between  
17 themselves signed counterparts. Any executed counterpart will be admissible in evidence to  
18 prove the existence and contents of this Agreement.

19 11.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the  
20 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further  
21 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend  
22 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement  
23 process.

24 11.20. Severability. In the event that one or more of the provisions contained in this Agreement  
25 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,  
26 illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel  
27 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing  
28

1 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this  
2 Agreement.

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4 **IT IS SO AGREED:**

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6 *Ricardo Novella* 01/01/2026  
7 Plaintiff, RICARDO NOVELLA

*Martin Vallejo* 1/2/26  
For Defendant, MJM VALLEJO  
MINI-MARKET, INC.

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9

10

*Martin Vallejo* 1/2/26  
For Defendant, RJM VALLEJO  
MINI-MARKET, INC.

11

12

*Martin Vallejo* 1/2/26  
For Defendant, MARTIN VALLEJO

13

*MV* Martin Vallejo

14 **AGREED AS TO FORM ONLY:**

15

16 *Vedang J. Patel*  
17 David D. Bibiyan  
Vedang J. Patel  
18 Counsel for Plaintiff

*[Signature]*  
Christine D. Baran  
Joshua D. Klein  
Counsel for Defendants

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